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TO: Theodore Lipscomb, Sr., Chair
Milwaukee County Board of Supervisors

CC: County Clerk George Christenson (c/o Janelle Jensen)
County Executive Chris Abele

FROM: Paul Kuglitsch, Deputy Corporation Counsel ^{PK}
David Farwell, Assistant Corporation Counsel

DATE: June 27, 2019

RE: Referral of File No. 19-495

At its June 5, 2019, meeting, the Transportation, Public Works & Transit Committee referred File No. 19-495 to the Office of Corporation Counsel (“OCC”) for an opinion regarding whether the Milwaukee County Department of Transportation (“MCDOT”), without Committee review or County Board approval, can enter into a Memorandum of Understanding (“MOU”) with various other governmental agencies to address litter pick-up within the Milwaukee County freeway system. File No. 19-495 is as follows:

From the Director, Department of Transportation, providing an informational report regarding a Memorandum of Understanding with the Wisconsin Department of Transportation and the City of Milwaukee regarding pilot initiatives to address litter pick-up within the Milwaukee County freeway system. (INFORMATIONAL ONLY UNLESS OTHERWISE DIRECTED BY THE COMMITTEE)

A copy of the MOU is attached to the above-referenced file.

Under the current terms and conditions of the MOU, MCDOT can enter into it without Committee review or County Board approval.

On March 3, 2017, the OCC issued comprehensive guidance related to contracting authority in Milwaukee County post 2015 Wis. Act 55 (“Act 55”) (and its predecessor, 2013 Wis. Act 14 (“Act 14”)). See File Nos. 17-274 & 17-275¹.

¹ Corrected 03/08/2017

File No. 17-274

<https://milwaukeecounty.legistar.com/LegislationDetail.aspx?ID=2975579&GUID=F5E79274-8B24-4704-B455-1DE04878F2A2>

File No. 17-275

<https://milwaukeecounty.legistar.com/LegislationDetail.aspx?ID=2975580&GUID=3FFF89C3-E43A-4B85-938B-317C9F8C587B>

In the files, the OCC explained that Act 55 split control over county property between the County Board and County Executive. The County Board has authority over property zoned as parks; the County Executive has authority over all other property. *See* Wis. Stat. §§ 59.17(2)(b)3, 59.52(6). Also, in File No. 17-275, the OCC provided a table highlighting the types of contract review required under Acts 55 and 14 related to park and non-park property. *See* Corrected Exhibits to File No. 17-275, Ex. 2. (attached hereto as Ex. A).

For purposes of this opinion, instead of restating the guidance contained in the above-referenced files, I will analyze the MOU referring to the attached Ex. A and answer several baseline questions to determine the type of contract review.

- Is the MOU related to county property?
 - Yes. The purpose of the MOU is for MCDOT, the Wisconsin Department of Transportation, and the City of Milwaukee to cooperate in devising a plan to address litter pick-up on County, State, and City owned property under the freeway.
 - Referring to Ex. A, because the MOU is related to county property, it falls under either table 1 (county property zoned as parks) or table 2 (non-park property).

- Is the MOU related to county property zoned as parks or non-park property?
 - Under the terms of the MOU, it does not matter whether the property is zoned as parks or non-park property.
 - Referring to Ex. A, the value of the MOU is \$0 or “Less than \$100,000”, it is not a lease or easement, not a land sale or acquisition, and does not encumber funds from a future fiscal year. Therefore, under table 1, even if the property was county property zoned as parks, the MOU does not require Committee review or County Board approval.
 - Referring to Ex. A, if the MOU was related to non-park property, it would fall under table 2. Under table 2, the MOU would only require Committee review and County Board approval if it encumbered funds from a future fiscal year. Because the MOU does not encumber any such funds, no Committee review or County Board approval is necessary.

While it is our opinion that this MOU does not require legislative approval, any future agreements reached between parties would have to undergo a similar analysis to determine what type of contract review, if any, is required under Acts 55 and 14.²

² For example, does the future scope of work impact county-owned parcels zoned as parks, what is the value of the future contract, and does the contract obligate the County to future appropriations.

EXHIBIT A

Type of Review Required Under 2013 Act 14 and 2015 Act 55

NOTE: This table does not apply to contracts related to mental health and Community Based Residential Facilities, which the County Board cannot consider.

I. If the contract relates to county land zoned as park (but not the Transit Center parcel at 909 E. Michigan Street) or if the contract is not related to county non-park personal property,¹ buildings, facilities, or real estate:

	Total Contract Value		
	Less than \$100,000	\$100,000 to \$300,000	More than \$300,000
1. Professional Services - Operating	No Review	Passive Review	Full CB Approval
2. Professional Services – Capital	No Review	Passive Review	Full CB Approval
3. Public Works	No Review	No Review	No Review
4. Revenue/Concessions	No Review	Passive Review	Full CB Approval
5. Service Contract	No Review	Passive Review	Full CB Approval
6. Lease	Leases 1-year or longer require full CB approval. See MCO 56.10. Corporation Counsel will determine whether the agreement is a Lease or a Revenue/Concessions contract.		
7. Easement	Full CB Approval	Full CB Approval	Full CB Approval
8. Any Multi-Year Budget Contract	Full CB Approval	Full CB Approval	Full CB Approval
9. Land Sale/Acquisition	Full CB Approval	Full CB Approval	Full CB Approval
10. Purchase of Service	No Review	Passive Review	Full CB Approval
11. Fee for Service	No Review	Passive Review	Full CB Approval

II. If the contract relates to county non-park personal property, buildings, facilities or real estate or the Transit Center Parcel at 909 E. Michigan Street:

1. Professional Services – Operating* [^]	No Review	No Review	No Review
2. Professional Services – Capital* [^]	No Review	No Review	No Review
3. Public Works	No Review	No Review	No Review
4. Revenue/Concessions	No Review	No Review	No Review
5. Procurement – Services and Other Non-Professional Services* [^]	No Review	No Review	No Review
6. Procurement – Goods*	No Review	No Review	No Review
7. Lease / Easement (even if it uses funds from a not yet adopted fiscal year)	No Review	No Review	No Review
8. Any Multi-Year Budget Contract EXCEPT for Lease or Easement	Full CB Approval	Full CB Approval	Full CB Approval
9. Land Sale/Acquisition	No Review	No Review	No Review

* A contract involving non-park county personal property, buildings, facilities or real estate is not subject to CB review only if it uses funds from adopted fiscal years. Corporation counsel in conjunction with the Comptroller's Office will determine whether contracts meet this criteria.

[^]A contract for services is not subject to CB review only if it is related to non-park county personal property, buildings, facilities or real estate. Corporation counsel will determine whether services contracts meet this criteria.

Prepared by the Office of Corporation Counsel with the assistance of the Comptroller's Office
Corrected 3/8/2017

Handwritten signature and initials: PK, CF

¹ "Personal property" is all property – anything that can be owned or used or possessed, whether tangible or intangible – that is not real estate (for example, software systems, telephones, trademarks, copyrights, logos, any intellectual property, accounting systems, IT systems of any type, machinery (whether gigantic or tiny), microprocessors, furniture, bank deposits, annuities, cash, equipment, pencils, cleaning equipment, ideas, trade secrets, etc.). See Wis. Stat. §§ 990.01(27); 70.03; 70.04; *in re Estate of Larson*, 196 Wis. 2d 231, 235, 538 N.W.2d 802, 803 (Ct. App. 1995) ("bank deposits, checks, annuities and trust agreements are all ... intangible personal property... This conclusion is consistent with the law defining tangible and intangible personal property in other areas of the law, as in construing intangible personal property to include cash."); *Acharya v. Carroll*, 152 Wis. 2d 330, 335, 448 N.W.2d 275, 278 (Ct. App. 1989); Black's Law Dictionary, 7th ed. (1999) at 1233.